

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DOUGLAS JANISKEE,)	
Plaintiff,)	
)	No. 1:23-cv-848
v.)	
)	Honorable Paul L. Maloney
VERTAFORE, INC., <i>et al.</i> ,)	
Defendant.)	
_____)	

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court after Plaintiff, Mr. Douglas Janiskee, filed a motion to remand or, alternatively, leave to amend his complaint. (ECF No. 11). The Magistrate issued a prompt Report and Recommendation (“R&R”) that would deny Plaintiff’s motion or allow him to file an amended complaint removing his federal claim. (ECF No. 15). Plaintiff then filed a “Notice of Amendment” with a 141-page amended complaint as an attachment, which did not include a federal claim. (ECF No. 20). Defendant filed objections to the R&R. (ECF No. 21). The Court will adopt the Magistrate’s R&R.

I. Background

Defendants removed to this Court on August 14, 2023, after Plaintiff amended his previously state-law only complaint to include a claim under the Family Medical Leave Act (“FMLA”). (ECF No. 1). Plaintiff’s FMLA claim serves as the sole basis for federal jurisdiction. After removal, Plaintiff filed a motion to remand or, alternatively, leave to amend his complaint and remove the FMLA claim. The R&R would grant Plaintiff **14 days** to amend his complaint to omit his FMLA claim or, alternatively, to stipulate to dismiss the

claim with prejudice. Additionally, in the event Plaintiff dismisses the FMLA claim by amendment or stipulation, the R&R further recommends that the Court decline to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c)(3) and remand the state-law claims to state court.

II. Legal Standard

After being served with a report and recommendation issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court judge reviews de novo the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Only those objections that are specific are entitled to a de novo review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam).

III. Analysis

Defendants object to the R&R on two grounds. Defendants first insist that if Plaintiff chooses to amend his complaint to exclude his FMLA claim, he should be barred from bringing that claim again. Defendants have a genuine concern that Plaintiff is engaging in gamesmanship to return to state court. Presently, the Court will not keep Plaintiff from amending his complaint in state court if his action is to return there. If this case is remanded and Plaintiff again brings an FMLA claim, the state court is best situated to adjudicate whether the FMLA claim should be barred. Defendant's potential prejudice would be more ripe on remand. Defendants' first objection is denied.

Second, Defendants request that if Plaintiff is allowed to amend his complaint, the Court should require Plaintiff to specify whether his sexual harassment claim is asserted under state or federal law. (ECF No. 12-3 at PID 405; ECF No. 20-1 at PID 613). The Court agrees because if it is a federal claim, this action could still invoke federal jurisdiction.

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 15) is **ADOPTED** by the Court.

IT IS FURTHER ORDERED that Plaintiff's motion to remand (ECF No. 11) is **GRANTED IN PART** and **DENIED IN PART**.

IT IS FURTHER ORDERED that Plaintiff has **14 days** to amend his complaint to omit his FMLA claim or, alternatively, to stipulate to dismiss that claim with prejudice. Plaintiff must also indicate whether his sexual harassment claim is asserted under state or federal law if he amends his complaint.

IT IS FURTHER ORDERED that if Plaintiff amends his complaint to omit his FMLA claim or stipulates to dismiss the claim with prejudice, this action will be remanded to state court.

IT IS SO ORDERED.

Date: January 12, 2024

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge